

REMARKS

Claims 1-15 are pending in the application. Claims 16-19 have been canceled without prejudice or disclaimer of the subject matter claimed therein.

Claims 1-5, 8-10, and 13-15 are rejected under 35 U.S.C. 102(e) as being anticipated by Bhullar et al. (USPN 6,447,657). Bhullar et al. disclose a biosensor that compensates for small sample volumes by providing a cantilever based capillary design.

Claim 1 has been amended to recite that the biosensor has a spacer substrate with members and that the channel extends between the members. Claim 8 has been amended to recite a spacer substrate positioned on the support substrate, the spacer substrate having members, and the channel extends between members of the spacer substrate. Support for the amendments is found in the specifications and drawing and particularly at page 4 lines 28-30, page 5 lines 3-6, page 6 lines 7-9, and Figures 1A, 1B, 2, and 4. No new matter is added by virtue of the amendments.

It is respectfully submitted that Bhullar et al. fail to disclose or suggest a biosensor with a channel extending between members of the spacer substrate. Bhullar et al. instead disclose a capillary channel 18 positioned between cantilevered tabs 22, 72 and a spacer 16 that lies between body portions 20, 54. It is the spacer 16 that separates top and bottom elements 12, 14, which define the cantilevered capillary channel 18. (Column 2 lines 19-21). As such, the illustrated channel 18 cannot be said to extend between members of its spacer 16.

Moreover, Bhullar et al. teach away from the biosensors of claims 1 and 8. The Examiner's attention is directed to Figures 1-13 where Bhullar et al. exclusively teach a cantilevered capillary channel design. Further, Bhullar et al. teach that this cantilevered design permits desirable small sample volumes in biosensor 10. (Column 2 lines 9-11). Bhullar et al. fail provide any teaching or suggestion that would lead one away from this cantilevered design.

It is submitted that the teaching or suggestions, as well as the expectation of success, must come from the prior art and not applicants' disclosure. With that in mind, it becomes apparent that Bhullar et al. fail to disclose or suggest a biosensor that comprises "a support substrate having first and second ends, electrodes positioned on the support substrate, . . . a spacer substrate positioned on the support substrate, the spacer substrate having members, and a cover positioned on the spacer substrate, the cover cooperating with the support substrate to define a channel, the channel extending between members of the spacer substrate and including an inlet adjacent to the first end of the support substrate, and opposite ends, each electrode array being positioned in the channel adjacent to one of the opposite ends", as required by amended claim 1.

It is further apparent in light of the above, that Bhullar et al. fail to disclose or suggest a biosensor comprising "a support substrate, a first electrode set positioned on the support substrate, a second electrode set positioned on the support substrate, the first and second electrode sets being spaced-apart from one another, a spacer substrate positioned on the support substrate, the spacer substrate having members, and a cover extending across the first and second electrode sets, the cover cooperating with the support substrate to define a generally linear capillary channel extending between members of the spacer substrate, the channel having opposing first and second ends and an inlet positioned between the ends and between the first and second electrode sets", as recited by amended claim 8. Claims 9-10 and 13-15 depend from amended claim 8.

Accordingly, claims 1 and 8 as amended are not anticipated and are believed to be patentable over Bhullar et al. Claims 2-5 depend from amended claim 1 and claims 9-10 and 13-15 depend from amended claim 8. Reconsideration of the rejection in light of the amendments, leading to withdrawal of the rejection and allowance of the claims is respectfully requested.

Claims 5, 6, 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bhullar et al (USPN 6,447,657). Claims 5 and 6 depend from amended claim 1 and claims 11 and 12 depend from amended claim 8.

Claims 5 and 6 and 10-12 have been amended to correct an antecedent basis issue resulting from the above-discussed amendments to the independent claims. The rejection proffers that it would have been obvious to modify Bhullar et al. to include an additional spacer for aiding in sample migration. That proffer is respectfully traversed.

As discussed above, Bhullar et al. teach away from the biosensors of independent claims 1 and 8. The Examiner's attention is directed to Figures 1-13 where Bhullar et al. exclusively teach a cantilevered capillary channel design. Further, Bhullar et al. teach that this cantilevered design permits desirable small sample volumes in biosensor 10. (Column 2 lines 9-11). Bhullar et al. fail provide any teaching or suggestion that would lead one away from this cantilevered design. It is therefore submitted that Bhullar et al. does not make obvious dependent claims 5, 6, 11 and 12.

Moreover, it is respectfully contended that the differences between the claimed invention and the cited art are such that Applicants' invention as a whole would not have been obvious to one of ordinary skill in the art at the time the invention was made. It is respectfully contended that the claimed invention meets the test of patentability under 35 U.S.C. 103(a). Entry of the amendments leading to reconsideration of the rejections of the claims and withdrawal of the rejection is respectfully requested.

It is respectfully contended that the differences between the claimed invention and the cited art are such that Applicants' invention as a whole would not have been obvious to one of ordinary skill in the art at the time the invention was made. It is respectfully contended that the claimed invention meets the test of patentability under 35 U.S.C. 103(a). Entry of the amendments leading to reconsideration of the rejection of the claims and withdrawal of the rejection is respectfully requested.

The claims as submitted herein are believed to be in condition for allowance, and all wance of the application is respectfully requested. In addition, it is requested that any

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fees due be charged to Deposit Account Number 02-2958 with reference to (RDID 0090 US).

Respectfully submitted,

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